

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EARL GARDNER,

Petitioner,

v.

Case No. 05-CV-70824-DT

JUDGE WILDER,

Respondent.

ORDER OF DISMISSAL

On February 15, 2005, Petitioner Earl Gardner filed an application for the writ of habeas corpus. Petitioner failed to submit either the \$5.00 filing fee or an application to proceed *in forma pauperis* with his pleading. See 28 U.S.C. § 1914(a); 28 U.S.C. § 1915(a). In addition, the habeas petition was not legible, and Petitioner did not provide any copies of it. See Local Rule 5.1(a) and (b) (E.D. Mich. Mar. 2, 1998). The named respondent did not appear to be the person having custody of the petitioner, as is required by 28 U.S.C. § 2242, and it appeared that a second petitioner, Stanley Mack Barnes, may have joined Petitioner Gardner in applying for relief.

On March 17, 2005, the court ordered petitioner Gardner to submit either the \$5.00 filing fee or an original and one copy of a completed, signed, and dated application to proceed *in forma pauperis*. (03/17/05 Order at 1.) The court mailed the order to petitioner Gardner with an application for leave to proceed *in forma pauperis*. The court further ordered Petitioner to submit one original and two copies of a legible habeas corpus petition with a caption that named one petitioner and the warden who

had custody of the petitioner. The court ordered Petitioner to submit these items to the court within twenty-one days of the date of the order. The court warned Petitioner that failure to comply with the order could result in dismissal of this action.

To date, Petitioner has not responded to the court's order. Accordingly, the habeas petition is dismissed without prejudice for failure to comply with the rule and statutes cited above.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 17, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 17, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522

copy mailed to: Earl Gardner, #120848
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